

AMENDED IN ASSEMBLY APRIL 22, 1996

AMENDED IN ASSEMBLY APRIL 8, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

## ASSEMBLY BILL

**No. 3251**

**Introduced by Assembly Member Gallegos**

February 23, 1996

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~~An act to add Sections 1367.30 and 1367.31 to the Health and Safety Code, relating to health care service plans. An act to add Section 1383.1 to the Health and Safety Code, and to add Sections 10123.67 and 11512.61 of the Insurance Code, relating to health care.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 3251, as amended, Gallegos. Health care service plans: independent medical opinions.

Existing law provides for the licensure and regulation of health care service plans administered by the Commissioner of Corporations. Existing law authorizes an enrollee of a health care service plan to select as a primary care physician any available primary care physician who contracts with the plan in the service plan area where the enrollee lives or works. ~~Existing law also requires that certain health care service plans offer coverage for various medical treatments.~~ Under existing law, willful violation of any of these provisions is a misdemeanor. *Existing law provides for the regulation of disability insurers and nonprofit hospital service plans by the Department of Insurance.*

~~This bill would require every health care service plan to pay for an independent second medical opinion, as defined, for any enrollee who has been diagnosed with any condition that could cause death or serious disability or result in a serious chronic illness, including any condition of this type that may involve an elective surgical procedure. The bill would require the health care service plan to disclose the fact that an independent second medical opinion may be requested by an enrollee under this provision in a prominent location in the existing disclosure documents that health care service plans are required to furnish upon enrollment.~~

~~This bill also would authorize any enrollee of a health care service plan who has sought medical care under his or her plan on at least 3 separate occasions in a 3-month period for the same problem and who believes that he or she suffers from a serious illness that may cause death or serious disability or suffers from a serious chronic illness, for which he or she has not been diagnosed or treated, including any illness of this type that may involve an elective surgical procedure, to engage, at his or her own expense, a physician or health care provider outside the plan to render an independent medical opinion, as defined. The bill would provide that if the independent medical opinion contains a diagnosis that the enrollee suffers from a serious illness that could cause death or serious disability, or suffers from a serious chronic illness, and the enrollee's plan failed to diagnose or treat that illness under the circumstances described above, the plan is required to pay for the independent medical opinion and any examinations and tests that were ordered by the physician or health care provider rendering the independent medical opinion~~ *file with the Department of Corporations a written policy describing the manner in which the plan determines if a second medical opinion is medically necessary and appropriate. The bill would require notice of the policy and related information to be provided to all enrollees. By changing the definition of a crime, the bill would impose a state-mandated local program.*

*The bill would impose identical requirements on nonprofit hospital service plans and certain disability insurers.*



The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1383.1 is added to the Health and  
2     Safety Code, to read:

3     1383.1. On or before July 1, 1997, every health care  
4     service plan shall file with the department a written  
5     policy describing the manner in which the plan  
6     determines if a second medical opinion is medically  
7     necessary and appropriate. Notice of the policy and  
8     information regarding the manner in which an enrollee  
9     may receive a second medical opinion shall be provided  
10    to all enrollees. The written policy shall describe the  
11    manner in which requests for a second medical opinion  
12    are reviewed by the plan.

13    SEC. 2. Section 10123.67 is added to the Insurance  
14    Code, immediately following Section 10123.6, to read:

15    10123.67. On or before July 1, 1997, every disability  
16    insurer that covers hospital, medical, or surgical expenses  
17    shall file with the department a written policy describing  
18    the manner in which the insurer determines if a second  
19    medical opinion is medically necessary and appropriate.  
20    Notice of the policy and information regarding the  
21    manner in which an insured may receive a second  
22    medical opinion shall be provided to all insureds. The  
23    written policy shall describe the manner in which  
24    requests for a second medical opinion are reviewed by  
25    the insurer.

26    SEC. 3. Section 11512.61 is added to the Insurance  
27    Code, immediately following 11512.6, to read:

28    11512.61. On or before July 1, 1997, every nonprofit  
29    hospital service plan shall file with the department a

1 written policy describing the manner in which the plan  
2 determines if a second medical opinion is medically  
3 necessary and appropriate. Notice of the policy and  
4 information regarding the manner in which a member  
5 may receive a second medical opinion shall be provided  
6 to all members. The written policy shall describe the  
7 manner in which requests for a second medical opinion  
8 are reviewed by the plan.

9 ~~SECTION 1. Section 1367.30 is added to the Health~~  
10 ~~and Safety Code, immediately after Section 1367.23, to~~  
11 ~~read:~~

12 ~~1367.30. (a) (1) Every health care service plan shall~~  
13 ~~pay for an independent second medical opinion for any~~  
14 ~~enrollee who has been diagnosed with any condition that~~  
15 ~~could cause death or serious disability or result in a serious~~  
16 ~~chronic illness, including any condition of this type that~~  
17 ~~may involve an elective surgical procedure.~~

18 ~~(2) For purposes of this section, "independent second~~  
19 ~~medical opinion" means a second medical opinion~~  
20 ~~rendered by a physician or health care provider who~~  
21 ~~meets all of the following criteria:~~

22 ~~(A) Performs an independent examination for~~  
23 ~~purposes of the second medical opinion.~~

24 ~~(B) Is not a provider for the health care service plan~~  
25 ~~of the enrollee.~~

26 ~~(C) Is not a holder of any financial interest,~~  
27 ~~whatsoever, in the health care service plan of the~~  
28 ~~enrollee.~~

29 ~~(b) The independent second medical opinion shall be~~  
30 ~~rendered by a physician or health care provider who is~~  
31 ~~selected by the enrollee and who specializes in the~~  
32 ~~particular type of illness with which the member has been~~  
33 ~~diagnosed.~~

34 ~~(c) (1) The health care service plan shall pay for an~~  
35 ~~independent examination, in an amount not to exceed~~  
36 ~~the amount that the plan pays its own health care~~  
37 ~~providers for the same service.~~

38 ~~(2) The health care service plan also shall pay for any~~  
39 ~~tests that are ordered by the physician or health care~~  
40 ~~provider that are reasonably necessary to provide the~~

~~independent second medical opinion and that were not ordered by the health care service plan for purposes of its diagnosis.~~

~~(d) Upon authorization by the enrollee, the health care service plan shall make all patient medical records of the enrollee available to the physician or health care provider rendering the independent second medical opinion.~~

~~(e) The health care service plan shall approve the request of an enrollee for an independent second medical opinion, or explain in writing the reasons for any denial of the request as follows:~~

~~(1) Within one week of the request, for any enrollee facing imminent threat of death.~~

~~(2) Within three weeks of the request, for any enrollee, other than an enrollee described in paragraph (1).~~

~~(f) The health care service plan shall disclose the fact that an independent second medical opinion may be requested by an enrollee under this section in a prominent location in the existing disclosure documents that health care service plans are required to furnish upon enrollment pursuant to this chapter.~~

~~(g) An enrollee may use the normal appeals process available under the plan if the health care service plan denies the request for an independent second medical opinion authorized by this section. Notwithstanding any other law, the appeals process may not take longer than 30 days.~~

~~(h) The results of the independent second medical opinion may be used as evidence of what is “necessary medical care” in any appeal of a denial by the health care service plan of the request for an independent second medical opinion.~~

~~(i) Nothing in this section shall require any health care service plan to provide experimental treatment as a result of the independent second medical opinion.~~

~~SEC. 2. Section 1367.31 is added to the Health and Safety Code, immediately after Section 1367.30, to read:~~

~~1367.31. (a) (1) Any enrollee of a health care service plan who has sought medical care under his or her plan on at least three separate occasions in a three-month period for the same problem and who believes that he or she suffers from a serious illness that may cause death or serious disability or suffers from a serious chronic illness, for which he or she has not been diagnosed or treated, including any illness of this type that may involve an elective surgical procedure, may engage, at his or her own expense, a physician or health care provider outside the plan to render an independent medical opinion.~~

~~(2) For purposes of this section, "independent medical opinion" means a medical opinion rendered by a physician or health care provider who is not a provider for the health care service plan of the enrollee.~~

~~(b) If the independent medical opinion of the physician or health care provider contains a diagnosis that the enrollee suffers from a serious illness that could cause death or serious disability, or suffers from a serious chronic illness, and the enrollee's plan failed to diagnose or treat that illness under the circumstances described in subdivision (a), the plan shall pay for the independent medical opinion and any examinations and tests that were ordered by the physician or health care provider rendering the independent medical opinion.~~

~~(c) If subdivision (b) applies, the enrollee shall seek treatment from his or her own plan for the illness with which he or she has been diagnosed by the physician or health care provider rendering the independent medical opinion. If the enrollee chooses to seek treatment for the illness from a physician or health care provider outside of the health care service plan, it shall be at the enrollee's own expense, unless otherwise provided by contract.~~

~~SEC. 3.—~~

~~SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty~~

1 for a crime or infraction, within the meaning of Section  
2 17556 of the Government Code, or changes the definition  
3 of a crime within the meaning of Section 6 of Article  
4 XIII B of the California Constitution.

5 Notwithstanding Section 17580 of the Government  
6 Code, unless otherwise specified, the provisions of this act  
7 shall become operative on the same date that the act  
8 takes effect pursuant to the California Constitution.

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